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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 GINA DANNENBRING,

9 Plaintiff(s),

10 v.

11 WYNN LAS VEGAS, LLC,

12 Defendant(s).
13

2:12-CV-00007 JCM (VCF)

14 **ORDER**

15 Presently before the court is defendant Wynn Las Vegas, LLC's motion for summary
16 judgment. (Doc. # 90). Plaintiff Gina Dannenbring filed a response (doc. # 93), and defendant filed
17 a reply (doc. # 102).

18 Also before the court is plaintiff's motion for conditional certification and circulation of
19 notice of a pending FLSA § 216(b) collective action. (Doc. # 64). Defendant filed a response in
20 opposition (doc. # 81), to which plaintiff filed a reply (doc. # 83).

21 The instant case involves claims of Title VII discrimination, discrimination under Nevada
22 state law, Title VII retaliation, intentional infliction of emotional distress, and violations of the Fair
23 Labor Standards Act ("FLSA") by plaintiff Gina Dannenbring against her former employer,
24 defendant Wynn Las Vegas, LLC. For the purposes of clarity, the court will address plaintiff's claims
25 relating to her termination prior to addressing her FLSA claim.

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1 **I. Legal Standard**

2 The Federal Rules of Civil Procedure provide for summary adjudication when the pleadings,
3 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
4 show that “there is no genuine issue as to any material fact and that the movant is entitled to a
5 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is “to
6 isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24
7 (1986).

8 In determining summary judgment, a court applies a burden-shifting analysis. “When the
9 party moving for summary judgment would bear the burden of proof at trial, it must come forward
10 with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial.
11 In such a case, the moving party has the initial burden of establishing the absence of a genuine issue
12 of fact on each issue material to its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213
13 F.3d 474, 480 (9th Cir. 2000) (citations omitted).

14 In contrast, when the nonmoving party bears the burden of proving the claim or defense, the
15 moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
16 element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving party failed to
17 make a showing sufficient to establish an element essential to that party’s case on which that party
18 will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving party fails
19 to meet its initial burden, summary judgment must be denied and the court need not consider the
20 nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60 (1970).

21 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
22 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
23 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the opposing
24 party need not establish a material issue of fact conclusively in its favor. It is sufficient that “the
25 claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing versions
26 of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 631 (9th
27 Cir. 1987).

1 In other words, the nonmoving party cannot avoid summary judgment by relying solely on
2 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040, 1045
3 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
4 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue
5 for trial. *See Celotex Corp.*, 477 U.S. at 324.

6 At summary judgment, a court's function is not to weigh the evidence and determine the
7 truth, but to determine whether there is a genuine issue for trial. *See Anderson v. Liberty Lobby, Inc.*,
8 477 U.S. 242, 249 (1986). The evidence of the nonmovant is "to be believed, and all justifiable
9 inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the nonmoving party is
10 merely colorable or is not significantly probative, summary judgment may be granted. *See id.* at
11 249–50.

12 **II. Claims Regarding Plaintiff's Termination**

13 *A. Background*

14 On or about June 23, 2008, plaintiff accepted a position in the slot marketing department at
15 the Wynn Las Vegas resort. In her capacity as a "slot marketing executive host," plaintiff was
16 responsible for cultivating relationships with resort guests to help produce and maintain customers
17 for defendant.

18 At the beginning of her employment, plaintiff signed a nondisclosure form in which she
19 agreed to "restrict disclosure of confidential information solely to those with a legitimate need to
20 know and not discuss the same with other persons or entities." (Doc. # 90-1 p. 60). At that time,
21 plaintiff also received a booklet describing defendant's code of business conduct, which specified
22 that employees "have a duty to protect [defendant's] assets and ensure their efficient use." (Doc. #
23 90-1 p. 66).

24 In June 2010, plaintiff informed her immediate supervisor that she was pregnant and stated
25 her intent to take twelve weeks of maternity leave followed by two weeks of vacation around the
26 time of her due date.

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1 On October 4, 2010, defendant received e-mails from an individual identifying
2 himself as “John Smith” and subsequently “John P. Jones,” indicating that he had in his
3 possession what he believed to be an unauthorized casino marketing list compiled by a Wynn
4 employee. The list included Wynn patron contact information along with the patrons’ respective
5 win/loss totals.

6 Security officers from defendant’s parent company, Wynn Resorts, Limited, initiated an
7 immediate investigation, ultimately revealing that plaintiff had compiled confidential information
8 in a spreadsheet on her home computer. Plaintiff’s former boyfriend had accessed plaintiff’s
9 computer and copied the file without plaintiff’s permission. On October 11, 2010, defendant ended
10 plaintiff’s employment, citing plaintiff’s failure to protect confidential information as the reason for
11 termination.

12 On or about November 8, 2010, Wynn received notification that plaintiff had filed a
13 claim for unemployment benefits with the Nevada Department of Employment, Training and
14 Rehabilitation, Employment Security Division. Subsequently, on November 19, 2010, defendant,
15 through its authorized representative, challenged any award of unemployment benefits on the basis
16 that plaintiff had violated company policy regarding the disclosure of confidential information.

17 Approximately six months after her termination from employment, plaintiff filed a charge
18 of discrimination with the Nevada Equal Rights Commission. On or about August 29, 2011, plaintiff
19 amended her charge of discrimination alleging that defendant had retaliated against her by
20 challenging her unemployment benefits.

21 Plaintiff now alleges (a) that defendant violated Title VII by terminating her on the basis of
22 sex, (b) defendant violated Nevada state law by denying her pregnancy leave, (c) defendant further
23 violated Title VII by challenging her claim to unemployment benefits, and (d) defendant committed
24 the tort of intentional infliction of emotional distress by terminating plaintiff’s employment.

25 *B. Title VII Discrimination*

26 42 U.S.C. § 2000e(k) states that “women affected by pregnancy, childbirth, or related medical
27 conditions shall be treated the same for all employment-related purposes . . . as other persons not so
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1 affected but similar in their ability or inability to work. . . .”

2 1. Prima Facie Case

3 Title VII claims are to be analyzed through the burden-shifting framework of *McDonnell*
4 *Douglas Corp. v. Green*, 411 U.S. 792 (1973). “Under this analysis, plaintiffs must first establish
5 a prima facie case of employment discrimination.” *Hawn v. Exec. Jet Mgmt., Inc.*, 615 F.3d 1151,
6 1155 (9th Cir. 2010). “Establishing a prima facie Title VII case in response to a motion for summary
7 judgment requires only minimal proof and does not even need to rise to the level of a preponderance
8 of the evidence.” *Palmer v. Pioneer Assocs, Ltd.*, 338 F.3d 981, 984 (9th Cir. 2003) (internal
9 citations and quotations omitted).

10 To establish a prima facie case, the plaintiff must present evidence showing: (1) she is a
11 member of a protected class; (2) she was performing her job in a satisfactory manner; (3) she
12 suffered an adverse employment action; and (4) that similarly situated individuals outside her
13 protected class were treated more favorably, or other circumstances surrounding the adverse
14 employment action give rise to an inference of discrimination. *See, e.g., Zeinali v. Raytheon Co.*, 636
15 F.3d 544, 552 (9th Cir. 2011).

16 Plaintiff alleges and defendant does not dispute that plaintiff is a member of a protected class.

17 While defendant has provided some evidence that plaintiff had been warned regarding some
18 aspects of her job performance, plaintiff’s evidence demonstrates that she had no warnings or
19 negative reviews for eighteen months prior to her termination. Therefore plaintiff has provided
20 sufficient evidence from which a reasonable person could conclude that she was performing her job
21 in a satisfactory manner.

22 Plaintiff and defendant agree that plaintiff was terminated from her employment, which is
23 certainly an adverse employment action.

24 Plaintiff has established that she informed defendant that she was pregnant, and that she was
25 terminated just weeks before her anticipated due date. These facts give rise to a possible inference
26 of discrimination.

27 Therefore plaintiff has sufficiently established a prima facie case of Title VII discrimination.
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1 2. Legitimate, Nondiscriminatory Reasons

2 “If plaintiffs establish a prima facie case, the burden of production, not of persuasion, shifts
3 to the employer to articulate some legitimate, nondiscriminatory reason for the challenged action.”
4 *Hawn*, 615 F.3d at 1155 (internal citations and quotations omitted). “If defendant meets this burden,
5 plaintiffs must then raise a triable issue of material fact as to whether the defendant’s proffered
6 reasons for their terminations are mere pretext for unlawful discrimination.” *Id.*

7 Here, defendant has provided significant evidence demonstrating that it terminated plaintiff’s
8 employment based on violations of its confidentiality policy. Defendant has demonstrated that it had
9 an established policy of protecting information regarding its customers, and that plaintiff agreed to
10 abide by this policy at the time she commenced her employment in 2008.

11 Defendant has also clearly shown that plaintiff violated this policy by failing to take measures
12 to prevent confidential information from falling into the hands of an unwanted third party. Plaintiff
13 does not dispute that her former boyfriend obtained the spreadsheet containing confidential
14 information. Therefore, defendant has carried its burden to produce evidence demonstrating that it
15 took adverse action against plaintiff for nondiscriminatory reasons.

16 3. Pretext

17 “A plaintiff can prove pretext in two ways: (1) indirectly, by showing that the employer’s
18 proffered explanation is unworthy of credence because it is internally inconsistent or otherwise not
19 believable, or (2) directly, by showing that unlawful discrimination more likely motivated the
20 employer.” *Noyes v. Kelly Servs.*, 488 F.3d 1163, 1171 (9th Cir. 2007) (internal citations, quotations,
21 and alterations omitted). “All the evidence as to pretext—whether direct or indirect—is to be
22 considered cumulatively.” *Id.*

23 Plaintiff argues that defendant’s explanation regarding her termination is pretext, pointing
24 to evidence showing that many other employees stored confidential information on their home
25 computers and were not terminated. However, this argument misses the mark. Defendant does not
26 claim that it terminated plaintiff’s employment purely because she stored confidential information
27 on her home computer. Instead, it points to the fact that plaintiff failed to protect the confidential
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1 information and allowed it to pass into the hands of an unwanted third party.

2 Plaintiff also indicates that defendant's explanation is pretext by pointing out that she
3 intended to take her maternity leave at the "busiest time of the year." (Doc. 90-1 p. 44). Despite
4 plaintiff's insinuation, plaintiff provides no evidence that the timing of her intended leave had
5 anything to do with defendant's decision to terminate her. On the contrary, defendant provides
6 records indicating that several other employees were allowed to take leave for lengthy periods at
7 similar times during the year.

8 Defendant's records specifically show that an executive host was allowed to take FMLA
9 leave between October 7, 2005, through February 16, 2006, a period that encompasses the entirety
10 of what plaintiff defines as "the busy season." In fact, not only did this employee continue working
11 for defendant after returning from leave, but she later received a promotion and continued her
12 employment with defendant for over five years.

13 Thus, plaintiff fails to produce any evidence indicating that defendant's justification for
14 terminating her employment was pretextual. The evidence on the record indicates that defendant
15 allowed employees to take maternity leave at any time of the year, and plaintiff cannot point to any
16 other case in which defendant terminated an employee for requesting parental leave. Therefore,
17 plaintiff has failed to carry her burden to raise a genuine dispute of material fact as to whether
18 defendant's proffered explanation for her termination was pretextual, and defendant's motion for
19 summary judgment will be granted as to the Title VII discrimination claim.

20 *C. Pregnancy Discrimination Under Nevada Law*

21 Plaintiff argues that defendant violated Nev. Rev Stat. § 613.335 by failing to grant her leave
22 based on her pregnancy. This statute provides:

23 If an employer grants leave with pay, leave without pay, or leave
24 without loss of seniority to his or her employees for sickness or
25 disability because of a medical condition, it is an unlawful
employment practice to fail or refuse to extend the same benefits to
any female employee who is pregnant.

26 However, as previously discussed, plaintiff's termination did not come as a result of her
27 pregnancy. Defendant's evidence demonstrates that plaintiff was terminated as a result of her failure
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1 to comply with the confidentiality policy. Plaintiff fails to provide any evidence indicating that her
2 pregnancy was the reason for her termination, therefore the court will grant defendant's motion for
3 summary judgment as it relates to this claim.

4 *D. Title VII Retaliation*

5 Federal law holds that "it is unlawful to retaliate against an employee because she has taken
6 action to enforce rights protected under Title VII." *Miller v. Fairchild*, 797 F.2d 727, 730 (9th Cir.
7 1986). "To succeed in a retaliation claim, the plaintiff must demonstrate (1) that she was engaging
8 in protected activity, (2) that she suffered an adverse employment decision, and (3) that there was
9 a causal link between her activity and the employment decision." *Hashimoto v. Dalton*, 118 F.3d
10 671, 679 (9th Cir. 1997).

11 In this claim, plaintiff argues that defendant "retaliated" against her by opposing her request
12 for unemployment benefits following her termination. This argument is nonsensical. Employers have
13 a lawful right to challenge unemployment insurance claims by former employees in administrative
14 and judicial proceedings. A ruling that defendant's conduct constituted retaliation would place
15 employers into an unwinnable paradox in which they would violate Title VII merely by arguing that
16 their prior actions did not violate Title VII. The court refuses to affirm such a confounding assertion.

17 Because the evidence shows that defendant did nothing more than assert its legal right to
18 challenge plaintiff's claim for unemployment benefits, plaintiff does not sufficiently raise a prima
19 facie claim for Title VII retaliation, and the court will grant defendant's motion for summary
20 judgment as to this claim.

21 *E. Intentional Infliction of Emotional Distress*

22 To establish a claim of intentional infliction of emotional distress, a plaintiff must prove: (1)
23 defendant engaged in "extreme and outrageous conduct with either the intention of, or reckless
24 disregard for, causing emotional distress; (2) [plaintiff] suffered severe or extreme emotional
25 distress; and (3) actual or proximate causation." *Posadas v. City of Reno*, 851 P.2d 438, 444 (Nev.
26 1993).

27 . . .

1 Plaintiff claims that defendant engaged in extreme and outrageous conduct by terminating
2 her employment and opposing her claim for unemployment benefits while she was pregnant.
3 However, as previously stated, plaintiff provides no evidence indicating that the termination was
4 motivated by her pregnancy.

5 It is well established that termination of an employee does not, by itself, constitute “extreme
6 and outrageous conduct.” *See, e.g., Brooks v. Hilton Casinos Inc.*, 959 F.2d 757, 766 (9th Cir. 1992).
7 Because there is no evidence that this case involves anything other than the termination of an
8 employee on nondiscriminatory grounds, plaintiff fails to show that defendant engaged in any
9 extreme or outrageous conduct. Accordingly, the court will grant defendant’s motion for summary
10 judgment as it relates to the claim for intentional infliction of emotional distress.

11 **II. Plaintiff’s FLSA Claim**

12 *A. Background*

13 Prior to her termination, plaintiff worked as an “executive slot marketing host” in defendant’s
14 slot marketing department. Defendant states that plaintiff “was responsible for implementing
15 marketing initiatives and cultivating relationships with gaming customers, especially those with
16 preferences for playing slot machines, extending benefits and services to guests based on their
17 spending activity, issuing credit to gaming customers, reviewing and reactivating existing credit
18 lines, and mentoring slot hosts to help them develop their knowledge and customer relations skills.”
19 (Doc. # 90 p. 4:14-19).

20 Plaintiff alleges that defendant failed to pay its slot marketing hosts overtime due to its
21 incorrect classification of individuals in this position as exempt administrative employees. Plaintiff
22 asserts that slot marketing hosts do not perform work directly related to defendant’s management or
23 general business operations, nor do they exercise “discretion or independent judgment.” Therefore,
24 she argues, these employees do not fall within the FLSA administrative employees exemption.

25 Plaintiff claims that, while she was employed as an executive slot marketing host, she was
26 required to carry a company-issued cell phone or have business calls forwarded to a personal cell
27 phone at all times. She further alleges that this requirement not only applied to her as an “executive
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1 slot marketing host” but to all employees within defendant’s international marketing, domestic
2 marketing, and slot marketing departments.

3 She recounts, “These phones rang day and night, regardless of whether the host was
4 scheduled to work during the shift when the phone call was received. The expectation was that the
5 host would answer the phone call, greet the guest cheerfully, and accommodate the guest to secure
6 additional business from the guest.” (Doc. # 64 pp. 7-8). Plaintiff further claims that she was
7 required to make a minimum of thirty-five calls per day, regardless of the timing of her shift.
8 Plaintiff claims that she and other hosts are entitled to overtime compensation for the time they spent
9 on-call beyond eight hours per day/forty hours per week.

10 B. *FLSA Framework*

11 The FLSA was created to provide a uniform national policy of guaranteeing compensation
12 for all work or employment covered by the act. *Barrentine v. Arkansas–Best Freight Sys., Inc.*, 450
13 U.S. 728, 741 (1981). The FLSA grants individual employees broad access to the courts and permits
14 an action to recover minimum wages, overtime compensation, liquidated damages, or injunctive
15 relief. *Id.* at 740.

16 However, the overtime provision of the FLSA does not apply to “any employee
17 employed in a bona fide executive, administrative, or professional capacity . . . (as such terms are
18 defined and delimited from time to time by regulations of the [s]ecretary).” 29 U.S.C. §
19 213(a)(1). The regulations clarify that an “employee in a bona fide administrative capacity” refers
20 to an employee that is:

21 (1) Compensated on a salary or fee basis at a rate of not less than
22 \$455 per week . . . exclusive of board, lodging or other facilities;

23 (2) Whose primary duty is the performance of office or non-manual
24 work directly related to the management or general business
operations of the employer or the employer's customers; and

25 (3) Whose primary duty includes the exercise of discretion and
independent judgment with respect to matters of significance.

26 29 C.F.R. § 541.200
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“Because the FLSA is to be liberally construed to apply to the furthest reaches consistent with congressional direction, FLSA exemptions are to be narrowly construed against employers and are to be withheld except as to persons plainly and unmistakably within their terms and spirit.” *Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120, 1124-25 (9th Cir. 2002) (internal quotation marks and citations omitted).

Whether plaintiff’s activities as an executive slot marketing host make her exempt from the overtime benefits of the FLSA is a question of law. *See Bothell v. Phase Metrics, Inc.*, 299 F.3d 1120, 1124 (9th Cir. 2002) (citing *Icicle Seafoods, Inc. v. Worthington*, 475 U.S. 709, 714 (1986)). Plaintiff’s actual job responsibilities as well as how her working time was allocated are questions of fact. *See Bothell*, 299 F.3d at 1124.

1. Compensation

Defendant claims and plaintiff does not dispute that plaintiff earned an annual salary of \$65,000 as an executive slot marketing host. This amount exceeds the \$455 per week minimum required for the administrative exemption.

2. Management or General Business Operations

29 C.F.R § 541.201 states:

(a) To qualify for the administrative exemption, an employee's primary duty must be the performance of work directly related to the management or general business operations of the employer or the employer's customers. The phrase “directly related to the management or general business operations” refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

(b) Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption.

1 While the category of work “related to the general business operations of the
2 employer” is easily discernible in a manufacturing or retail businesses, it is rather ambiguous
3 in companies focused on providing services. The question as to whether plaintiff’s work
4 related to defendant’s general business operations is especially difficult in this case,
5 considering the unique nature of the gaming-entertainment industry.

6 However, because plaintiff’s work activities primarily involved “marketing,” the
7 court finds that her work was related to defendant’s general business operations. Plaintiff’s
8 job responsibilities involved promoting certain activities at defendant’s gaming resort and
9 persuading customers to spend money on defendant’s “products.” Plaintiff extended lines of
10 credit and distributed “complimentaries” in order to make slot-gaming more appealing and
11 accessible to guests of the Wynn. In the context of a gaming resort, these activities certainly
12 constitute “marketing.” Because marketing is among the activities specifically listed in 29
13 C.F.R § 541.201, the court finds that plaintiff’s primary duties were related to defendant’s
14 general business operations.

15 3. Discretion and Independent Judgment

16 Finally, the question as to whether plaintiff falls within the administrative exemption
17 depends upon whether her primary duties included the use of discretion and independent
18 judgment. With regard to the use of “discretion and independent judgment,” the federal
19 regulations provide specific guidance:

20 (b) The phrase “discretion and independent judgment” must be
21 applied in the light of all the facts involved in the particular
22 employment situation in which the question arises. Factors to
23 consider when determining whether an employee exercises discretion
24 and independent judgment with respect to matters of significance
25 include, but are not limited to: whether the employee has authority to
26 formulate, affect, interpret, or implement management policies or
27 operating practices; whether the employee carries out major
28 assignments in conducting the operations of the business; whether the
employee performs work that affects business operations to a
substantial degree, even if the employee's assignments are related to
operation of a particular segment of the business; whether the
employee has authority to commit the employer in matters that have
significant financial impact; whether the employee has authority to
waive or deviate from established policies and procedures without
prior approval; whether the employee has authority to negotiate and

1 bind the company on significant matters; whether the employee
2 provides consultation or expert advice to management; whether the
3 employee is involved in planning long- or short-term business
4 objectives; whether the employee investigates and resolves matters of
5 significance on behalf of management; and whether the employee
6 represents the company in handling complaints, arbitrating disputes
7 or resolving grievances.

8 (c) The exercise of discretion and independent judgment implies that
9 the employee has authority to make an independent choice, free from
10 immediate direction or supervision. However, employees can exercise
11 discretion and independent judgment even if their decisions or
12 recommendations are reviewed at a higher level. Thus, the term
13 "discretion and independent judgment" does not require that the
14 decisions made by an employee have a finality that goes with
15 unlimited authority and a complete absence of review. The decisions
16 made as a result of the exercise of discretion and independent
17 judgment may consist of recommendations for action rather than the
18 actual taking of action. The fact that an employee's decision may be
19 subject to review and that upon occasion the decisions are revised or
20 reversed after review does not mean that the employee is not
21 exercising discretion and independent judgment. For example, the
22 policies formulated by the credit manager of a large corporation may
23 be subject to review by higher company officials who may approve
24 or disapprove these policies. The management consultant who has
25 made a study of the operations of a business and who has drawn a
26 proposed change in organization may have the plan reviewed or
27 revised by superiors before it is submitted to the client.

28 29 C.F.R. § 541.202.

Applying these regulations to the facts of this case, it is clear that plaintiff exercised discretion and independent judgment. Observing the § 541.202(b) factors, two in particular stand out as particularly relevant to this case: (1) "whether the employee has authority to commit the employer in matters that have significant financial impact" and (2) "whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices."

Defendant claims, and plaintiff does not dispute, that plaintiff was given the discretion to issue credit lines of up to \$25,000 per guest. Though plaintiff was given guidelines as to how she was to issue lines of credit, her decisions were not subject to direct review. Additionally, plaintiff's responsibilities included mentoring slot marketing hosts to help them develop their knowledge and customer relations skill. Moreover, in her complaint,

1 plaintiff indicates that she “was the only manager assigned to the swing shift . . .” at certain
2 times relevant to this action. (Doc. # 23 p. 7:10-11).

3 In giving her the ability to issue \$25,000 credit lines at her own discretion, defendant
4 bestowed upon plaintiff the “authority to commit [defendant] in matters that have significant
5 financial impact.” Furthermore, plaintiff’s role as the sole manager placed on a shift belies
6 her claim that she did not have “authority to implement management policies or operating
7 practices” in her position. Thus, these two factors decisively indicate that plaintiff exercised
8 sufficient “discretion and independent judgment” in her position to be classified as an
9 exempt administrative employee under the FLSA.

10 Because the court finds that plaintiff was properly classified as an exempt
11 administrative employee, she does not qualify for overtime benefits under the FLSA.
12 Therefore, the court will grant defendant’s motion for summary judgment as to this claim.

13 Accordingly,

14 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant’s motion
15 for summary judgment (doc. # 90) be, and the same hereby is, GRANTED. The clerk shall
16 enter judgment accordingly and close the case.

17 IT IS FURTHER ORDERED that plaintiff’s motion for conditional certification and
18 circulation of notice of a pending FLSA § 216(b) collective action (doc. # 64) is DENIED
19 as moot.

20 DATED February 7, 2014.

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23 UNITED STATES DISTRICT JUDGE
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